IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5129 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANWAR SHRIBAGHSINGH TANWAR - Applicant(s)
Versus
KUTBI HUSSAINBHAI RAJA & 1 - Respondent(s)

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Appearance :

MR AMIT S AGARAWAL for Applicant(s) : 1,MR AMRISH K PANDYA for Applicant(s) : 1,
MR SOEB R BHOHARIA for Respondent(s) : 1,
Mr. K.T. Dave, Addl.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/08/2007
ORAL JUDGMENT

Rule. Shri Soeb R. Bhoharia, learned advocate waives service of Rule on behalf of respondent No.1 original-complainant and Shri KT

Dave, learned APP waives service of Rule on behalf of respondent No.2 State. With the consent of learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

2. By way of this application under Section 482 of the Code of Criminal Procedure the petitioner original-accused has prayed for an appropriate order to quash and set aside the complaint pending before the learned JMFC, Ahmedabad [Rural] and further proceedings in connection with Criminal Case No. 3615 of 2005 for the offences punishable under Section 406, 420 and 506(2) of the Indian Penal Code.

3. A criminal complaint has been filed by the petitioner against the respondent No.1 herein, original-complainant in the Court of learned JMFC, Ahmedabad (Rural) in Criminal Case No. 3615/2005 for the offences punishable under Section 406, 420 and 506(2) of the Indian Penal

Code and the learned JMFC, Ahmedabad (Rural) has issued summons against the petitioner and hence the petitioner has preferred the present petition under Section 482 of the Code of Criminal Procedure for quashing and setting aside the proceedings as well as the complaint. It is alleged in the complaint that the original-complainant is partner of firm in the name and style Honest Plastic and the petitioner was running business in the name of M/s. Tanwar Engineering Works who is doing business of manufacturing plant and machineries. It is alleged in the said complaint that in the month of October 2003 the respondent No.1 wanted to sell the used machineries; the petitioner came to know that the respondent No.1 wanted to sell the used machineries and so the petitioner came at his office at Sanand and showed his willingness to purchase the used machineries; and by 5 different transactions the respondent No.1, original-complainant sent the machineries to the petitioner worth Rs. 19,24,000 through different

invoices. It is alleged in the complaint that the petitioner gave a cheque of Rs. 7,50,000 dated 22.11.2003 and a further cheque of Rs. 2,00,000 dated 1.9.2004 and thus paid Rs. 9,50,000 towards total amount of Rs. 19,24,000 and an amount of Rs. 9,74,000 is due and payable by the petitioner. It is averred and alleged in the complaint that respondent No.1 made several reminders to the petitioner to repay the dues but he has only promised to pay the same within few months and has never paid the said amount and therefore it is alleged that the petitioner has committed the offences as alleged in the said complaint. It is alleged in the complaint that intention of the petitioner is dishonest and has cheated the complainant. As stated above in the said complaint as the learned JMFC, Ahmedabad (Rural) issued the summons upon the petitioner for the offences under Section 406, 420 and 506(2) of the Indian Penal Code the petitioner original-accused has preferred the present application.

4. Shri Amrish Pandya, learned advocate appearing on behalf of the petitioner original-accused has vehemently submitted that on bare reading of the averments and allegations in the complaint it prima facie does not disclose any cognizable offence under the Indian Penal Code more particularly under Section 406, 420 and 506(2). It is submitted that the dispute in the complaint is purely of a civil nature and the civil dispute has been converted into a criminal dispute. It is submitted that on bare reading of the complaint it does not disclose that the petitioner has committed any offence as alleged. It is further stated that to continue the criminal proceedings against the petitioner would be abuse of process of court. It is further submitted that at the best the dispute can be said to be of recovery of that amount against the goods supplied but it cannot be said that the petitioner has committed the offences as alleged. Learned Advocate appearing on behalf of the petitioner has relied upon the decision of the

Hon'ble Supreme Court in the case of ***Thelapalli Raghavaiah Vs. Station House Officer,*** reported in *2007 Cri.L.J. 1813* as well as another decision of the Hon'ble Supreme Court in the case of ***Veer Prakash Sharma Vs. Anil Kumar Agarwal & Anr.*** reported in *2007 AIR S.C.W. 4816* in support of his submission and prayer and requested to allow the present application.

5. Shri Soeb R. Bhoharia, learned advocate appearing on behalf of respondent No.1, original-complainant has tried to justify the filing of the complaint by submitting that though the machineries have been purchased by the petitioner and delivery has been taken still a huge amount of Rs. 9,74,000 is due and payable and as from the very beginning the intention of the petitioner was dishonest and to cheat and looking to the averments and allegations in the complaint it is requested to dismiss the present application. Shri KT Dave, learned APP has requested to pass an appropriate order

considering the averments and allegations in the complaint.

6. Heard the learned advocates appearing on behalf of respective parties. On bare reading of the complaint and taking the averments and allegations in the complaint on their face value in that case also it appears to the Court that the dispute in the complaint is purely of a civil nature for recovery of the amount for the goods and machineries sold to the petitioner. It is also required to be noted that even as per the averments in the complaint Rs. 9,50,000 are paid however it is the contention on behalf of the complainant that sum of Rs. 9,74,000 is still due and payable. Thus the dispute can be said to be purely of a civil nature relating to recovery of the amount for goods sold and purchased by the petitioner and considering the averments and allegations in the complaint it does not disclose any offence committed by the petitioner for the offences committed under Section 406, 420 and

506(2) of the Indian Penal Code. It appears to this Court that a civil dispute is tried to be converted into a criminal dispute for recovery of the amount. As held by the Hon'ble Supreme Court in the case of ***Veer Prakash Sharma [supra]***, non-payment or under payment of purchase price does not constitute offence of breach of trust or cheating and it is essentially a civil dispute. The similar view has been taken by the Hon'ble Supreme Court in the case of ***Thelapalli Raghavaiah [supra]***. Considering the two decisions of the Hon'ble Supreme Court and considering the averments in the complaint, it appears to this Court that continuance of the present proceedings would be abuse of process of the Court and if it is allowed to continue it would cause unnecessary harassment to the petitioner. Under the circumstances, this is a fit case which falls within the parameters of exercise of powers under Section 482 of the Code of Criminal Procedure.

7. For the reasons stated above, the petition succeeds. The Criminal Case No. 3615 of 2005 pending in the Court of learned JMFC, Ahmedabad [Rural] is quashed and set aside. Rule is made absolute accordingly.

[M.R. Shah, J.]

rmr.